

Indiana Department of State Revenue
Revenue Ruling #2004-01IT
August 26, 2004

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ISSUE

Adjusted Gross Income Tax, Et Al. – Community Revitalization Enhancement District Tax Credit

Authority: IC 6-3.1-19-3

The taxpayer requests the Department to rule whether or not investor members will be entitled to a pro rata percentage of the available and qualified credit within a given year based upon each member's pro rata ownership in the taxpayer at the time the taxpayer makes qualified investment expenditures.

STATEMENT OF FACTS

The taxpayer, an LLC, plans to construct a building in a part of a district that has been designated as a Community Revitalization Enhancement District (CReED) under IC 6-3.1-19. The taxpayer has obtained approval for a tax credit authorized under the CReED statute. To help finance the project, the taxpayer will soon begin securing investors for the project. The investors, which may include business entities such as corporations or individuals, will become members of the taxpayer. Once the investor group becomes fixed, investors will share income, profits and cash flow with all other members of the taxpayer at a ratio of 99 percent for investors and 1 percent for the developer. After 2006, depreciation will be split into the ratio of positive capital accounts until capital accounts are equal to zero, and all other items will be shared at a ratio of 1 percent for the investors and 99 percent for the developer. The taxpayer will be taxed as a partnership for federal income tax purposes.

DISCUSSION

IC 6-3.1-19-3(a) provides:

Subject to section 5 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state and local tax liability for a taxable year if the taxpayer makes a qualified investment in that year.

IC 6-3.1-19-3(e) provides, in relevant part:

If a pass through entity is entitled to a credit under this chapter but does not have state and local liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

1. the tax credit determined for the pass through entity for the taxable year; multiplied by
2. the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

It is clear from the above statute, a taxpayer is entitled to a tax credit if the taxpayer makes a qualified investment. Further, if the taxpayer is a pass through entity and has no state and local tax liability against which the tax credit may be applied, each owner of the taxpayer is entitled to a pro rata portion of the tax credit.

In the instant case then, to the extent the taxpayer makes a qualified investment in a given tax year and does not have state and local tax liability against which the tax credit may be applied, an investor member would be entitled in such year to a tax credit equal to the tax credit determined for the taxpayer for such year multiplied by the percentage of the taxpayer's distributive income to which the investor member is entitled. If an investor member's ownership percentage in the taxpayer is equal to the percentage of the distributive income of the taxpayer to which the investor member is entitled in a taxable year that the taxpayer makes a qualified investment, the tax credit available to the investor member would equal the tax credit determined for the taxpayer for that taxable year multiplied by the investor member's ownership percentage in the taxpayer for that taxable year.

RULING

The Department rules that investor members will be entitled to a percentage of the available and qualified CReED credit determined for the taxpayer for a taxable year based upon the percentage of the taxpayer's distributive income to which the investor member is entitled in such taxable year.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.